COMMENTS OF THE TRIAL COURT IN DENYING DEFENDANTS' MOTION FOR A DIRECTED VERDICT ON CONTRACT LIABILITY

(The following is excerpted from the proceedings held in chambers:)

THE COURT: I really want to know, for the purposes of my decision, what is Exhibit 1?

MR. HOLLAND: I'll get to that.

THE COURT: All right.

MR. HOLLAND: Let's narrow our sight, for the purpose of this argument and for the purpose of making this point, to the assumption that there was nothing more than Exhibit 1 in existence between the parties.

THE COURT: All right.

MR. HOLLAND: And that they were bringing suit on Exhibit 1. And that we were refusing to pay based upon an alleged termination of the contract.

The question would then be: Did the insured possess sufficient information at the time that the insuring representations were made and acted upon, and until the time of insurance effectiveness through the payment of benefits, and so forth occurred, did they possess sufficient information to know of the rights of termination which the insurance company reserved to itself.

THE COURT: All right.

MR. HOLLAND: My answer to that would be yes. Because we have—

THE COURT: I don't want the arguments why.

MR. HOLLAND: Yes.

THE COURT: Is it your position then that the plaintiffs were put on notice, by virtue of Exhibit 1, of the termination rights of your company, because obviously they couldn't have known through 14?

MR. HOLLAND: Absolutely. They were put on notice in that respect. And so far as Mrs. Sparks is concerned, she had the additional opportunity to read and examine the certificate of participation—

THE COURT: Okay.

MR. HOLLAND: —at the time that it was delivered.

THE COURT: *Well, if that's the case, then I'm going to have to rule against you on your motion for directed verdict.* I'm also going to have to make some law of the case, which is important to know where we are heading when the case resumes on Tuesday.

It's the position of the defendant and the plaintiffs that the plaintiffs relied on Exhibit 1, and that they could never be able to rely on Exhibit 14, because by then whenever Exhibit 14 could have been available, they were unable to comprehend it or the injury had already taken place.

I think we have an estoppel situation. I think Exhibit 1 is— (A), I don't think it's ambiguous at all. I think it clearly says to me that on its face that the obligation of the defendant for injuries runs beyond the termination of the contract until its limits are reached.

In other words, that my reading of the contract, and I see it as a matter of law, that right on that contract it says you get to have—once you're injured you continue with those benefits, even though the contract terminates.

But let's assume that I am not going to be limited to that ruling, because I also find that even if it's not a matter of law clear on its face, I find Exhibit 1 to be so ambiguous that I would have to rule against the insurance company in favor of the plaintiffs and find that again the obligation of the defendant for injuries to the plaintiff runs beyond the termination of the contract until the limits of the policy are reached.

I find that the plaintiffs' rights to receive benefits vest at the time of the injury, and continue on until the limits are exhausted. So, I find that those are two findings that I would make.

Beyond that, I believe that the plaintiffs have a right to reasonably expect—and in fact it shocks my conscience that the insurance company could possibly take any other view than once a person is injured under the terms of that policy that they cut off his injury rights just because he no longer is able to work and pay premiums. It doesn't seem to me that that's the purpose of health and accident insurance.

And I don't think that they have a right to limit themselves by the way they've tried to do in their position. But even beyond that, I think they have the—the plaintiff has the right to reasonably expect continuing benefits under the policy. I think the defendants are further estopped from their conduct, and from all the conduct that's been mentioned, to deny payments under this policy or to deny that the payments continue beyond the termination as claimed by the defendants.

Further, in view of the fact that the defendants are—I think they're further estopped because of the fact that they accepted money and continued on paying benefits during the term of the policy. I think that is—as a matter of law—is a decision that this Court has a right to make, and I so make it, removing from the jury those issues.

At this point I think the only thing that we can—I'll be glad to talk this over Tuesday, where we are going to head from here—is the question whether any issue should be submitted to the jury on the other factual theories that the plaintiff has brought forth: That is, consumer fraud,

fraud, intentional misrepresentation. I haven't made a decision on that yet, because it hasn't been argued. And also the argument as to whether the issue of bad faith and whether the issue of punitives should be issued to the jury.

MR. HOLLAND: In view of your ruling, as I respect it's been very clear in its giving, a very good indication of where the posture of the case stands in this Court, in view of the fact I believe you've used the expression "reasonable expectation" two or three times in your ruling, does this reflect your intention to invoke this doctrine of reasonable expectation, which the plaintiff has utilized in their arguments in this regard?

THE COURT: Yes. I would accept it in this jurisdiction. I would accept it as a good rule of law in this jurisdiction. But that is not the sole basis for my ruling.

MR. HOLLAND: I understand that. I wanted to clarify the record.

THE COURT: I think it's a unique—unique is the wrong word. I think it's a good theory to proceed under. But it's—beyond that, I think the face of Exhibit 1, right on itself, is so unambiguous as to clearly show coverage. And even if it is ambiguous, which it's the—if it isn't clear, then it's got to be ambiguous—it's got to be resolved against you.

So that, gentlemen, I'd do you the courtesy of letting you know what I believe the posture of the case is at that time.

Anything else?

MR. HOLLAND: No.

(An off the record discussion ensued.)

(R.T. "Ruling on Motions", August 29, 1980.) (Emphasis supplied).

* * * * *

PST-ALPHA TRUST AGREEMENT (EXHIBIT 15 IN EVIDENCE)

AGREEMENT AND DECLARATION OF TRUST

THIS AGREEMENT, made and entered into this 1st day of August 1975, by and between American Life Pension Health Associates Corporation (hereinafter ALPHA), Trustor, and First National Bank of Jackson, Mississippi, a national banking association, as Trustee;

WITNESSETH:

WHEREAS, ALPHA desires to establish a trust, the Trustee of which shall apply for and be the policyholder of such group insurance policy or policies as ALPHA directs for the benefit of employees of those employers who agree to become Trustors and participate in the Trust and accept a plan of group insurance as set forth herein and in such policy or policies, by executing and adopting said Request for Participation in substantially the form attached hereto as Exhibit A and made a part hereof;

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, it is mutually agreed as follows:

ARTICLE I
NAME OF TRUST

The name of this trust shall be the Planned Security Trust.

ARTICLE II
POWERS AND DUTIES OF THE TRUSTEE

Section 1. The Trustee shall make application to Republic National Life Insurance Company, Dallas, Texas, (hereinafter the Insurer) for the issuance of a policy or policies, or riders thereto, of Group Insurance to be issued to the Trustee as policyholder, providing such benefits for employees of participating employers and containing such other terms, all as directed in writing by ALPHA.

The Trustee shall agree with the Insurer regarding the above policy or policies of insurance on matters such as waiting period, conditions of eligibility, and any other conditions, all as directed by ALPHA.

Section 2. The Trustee shall exercise all rights and privileges granted to the policyholder by the provisions of the insurance policy or policies and may take any action with respect to such policy or policies of insurance, provided, however, Trustee shall not enter into any agreement with the insurer with respect to any alteration, modification, or amendment of such policy or policies except as directed in writing by ALPHA.

Section 3. The Trustee shall notify ALPHA of any tax or assessment levied upon the Trustee by reason of the existence of this trust.

Section 4. The Trustee need take no action to apply for any policy of insurance or to exercise any rights or privileges which the Trustee may have as a holder of an insurance policy pursuant to this agreement or to collect, receive, or disburse any funds or assets of any kind which may come into its possession pursuant to this agreement except on the written direction of ALPHA signed by an authorized representative thereof. Any action done or omitted by the Trustee in reliance on a written direction of ALPHA reasonably believed by the Trustee to be genuine shall be conclusively presumed to be proper for the discharge of the Trustee's duty pursuant to this Agreement. ALPHA shall indemnify the Trustee for any loss which it may sustain by reason of any action taken or omitted in reliance on a written direction of ALPHA.

Section 5. The Trustee shall have the right to require such information from ALPHA as the Trustee deems useful or necessary to discharge its duties under this Trust Agreement. The Trustee shall not be required to determine the accuracy or sufficiency of any information received from ALPHA. The Trustee shall not be required to determine the accuracy of computations of ALPHA to be used in de-

termining the number of participants for whom premiums are to be paid and the classification of such premiums. The Trustee shall not be required to maintain records concerning any participant in said insurance plan. The Trustee shall not be obliged to commence or maintain any litigation with respect to the trust unless it shall have been indemnified to its satisfaction against all expenses and liabilities that may be incurred thereby, including reasonable attorney's fees.

Section 6. The Trustee shall act in good faith and with ordinary care and so long as it does so it shall incur no responsibility, liability or obligation for loss or damage to any person as a result of any action taken or any act omitted to be taken by it or by any of its agents or employees. The Trustee is hereby authorized to rely upon the advice of ALPHA in the exercise of any right or privilege granted to it as a policyholder under the Group Insurance Policy or Policies and in the exercise of its duties as Trustee under this Agreement, and shall become liable to no person by reason of following such advice.

ARTICLE III
COMPENSATION AND EXPENSES OF TRUSTEE

Section 1. The Trustee shall be entitled to a reasonable compensation for its services, as may from time to time be agreed upon by the Trustee, and ALPHA shall be responsible for the payment of such fees.

Section 2. The Trustee shall be reimbursed for all taxes and assessments incurred in connection with this trust.

ARTICLE IV
ADMINISTRATOR

Section 1. ALPHA shall have the duty to administer this Agreement, and shall bear all expenses in connection therewith except for the contributions required by the Employers and employees hereunder. ALPHA shall construe this Agreement and determine all questions of interpretation, policy or administration of this Agreement

and the Plans of the Employers, and may correct any defect, supply any omission or reconcile any inconsistency in such manner and to such extent as it shall deem necessary or advisable to carry out the purposes hereof.

Section 2. ALPHA shall have the right to delegate the duty of administration imposed upon it under Section 1 of the Trust Agreement provided it joins Trustee as a party to any agreement by which it delegates its duty of administration.

ARTICLE V
RESIGNATION, REMOVAL AND SUBSTITUTION

Section 1. The Trustee shall have the right to resign at any time by delivering to ALPHA a written notice to take effect not less than 60 days after delivery thereof, unless ALPHA shall accept as adequate, a shorter notice.

Section 2. ALPHA shall have the right to remove the Trustee at any time by delivering to the Trustee a written notice to take effect not less than 60 days after delivery thereof unless the Trustee shall accept as adequate, a shorter notice.

Section 3. Upon resignation or removal of a Trustee, ALPHA shall appoint a successor Trustee which will have all the powers and duties of the predecessor Trustee.

Section 4. The Trustee, upon resigning or being removed, shall assign, transfer, convey and deliver to the successor Trustee or other person designated by ALPHA of all of its right, title and interest in and to the hereinbefore described Group Insurance Policy or Policies, and thereupon shall be fully released and discharged from all further obligations and liabilities hereunder, and the said successor Trustee shall succeed to and be vested with all of the powers, rights, discretions, obligations, and immunities conferred upon the original Trustee.

Section 5. The Trustee resigning or being removed shall have the right to settlement of its accounts, and upon failure of ALPHA to agree thereon, may apply to a court of competent jurisdiction or adjudication.

Section 6. Any successor to First National Bank of Jackson, Mississippi or American Life Pension Health Associates Corporation, whether through sale of transfer of its business, conversion, consolidation, merger, or otherwise, shall forthwith become the successor Trustee or successor to ALPHA respectively hereunder and shall succeed to all right, title and interest of the Trustee or ALPHA hereunder, and all powers, rights, discretions, obligations, and immunities of the Trustee or ALPHA hereunder, with the same effect as though such successor were originally named herein as the Trustee or ALPHA.

ARTICLE VI
TERMINATION OF TRUST

This trust may be terminated by ALPHA, the effective date of such termination to be the end of the policy month under the policy or policies purchased hereunder which next follows by at least ten days the receipt by the Trustee of notice of termination.

ARTICLE VII
AMENDMENTS

The provisions of this trust may be amended at any time by an instrument executed by ALPHA and the Trustee, provided that no amendment shall alter the purpose of the trust, to-wit: to provide through the trust hereby created insurance benefits as referred to above, and provided further that no such amendment shall increase the duties or decrease the powers of the Trustee without its written consent. ALPHA shall immediately notify the Insurer of any amendment or amendments to this agreement and shall forthwith furnish the Insurer with a properly executed copy of any such amendment or amendments.

ARTICLE VIII
MISCELLANEOUS PROVISIONS

Section 1. No person, partnership, corporation or association dealing with the Trustee shall be obligated to see that the terms of the trust have been complied with, or be obliged to inquire into the necessity or expediency of any act of the Trustee, and every instrument effected by the Trustee shall be conclusive in favor of any person, partnership, corporation or association relying thereon that:

(a) At the time of the delivery of said instrument, the trust was in full force and effect;

(b) Said instrument was effected in accordance with the terms and conditions of this Agreement;

(c) The Trustee was duly authorized and empowered to execute such Agreement.

Section 2. Any right to insurance benefits of any employee of a participating employer or any person claiming by, through or under such participant shall exist only to the extent that such benefits are provided under the terms and provisions of any policy or policies purchased hereunder.

The Trustee shall incur no liability, obligation or responsibility for any action taken pursuant to said written certification received from ALPHA.

Section 3. This Agreement shall extend to and be binding upon the successors and assigns of ALPHA and the Trustee.

Section 4. ALPHA shall construe this Agreement and determine all questions of interpretation, policy or administration of this Agreement and the Plans of the Employers, and may correct any defect, supply any omission or reconcile any inconsistency in such manner and to such extent as it shall deem necessary or advisable to carry out the purposes hereof.

ARTICLE IX
SITUS AND CONSTRUCTION OF TRUST

This trust is created and accepted in the State of Mississippi and all questions pertaining to its validity or construction shall be determined in accordance with the laws of that State.

In the event that any portion of this Agreement shall be construed by any court of competent jurisdiction to be illegal or unenforceable, said decree shall affect only such provisions as are referred to and all of the other provisions in said Agreement shall be enforceable as to each of the parties hereto.

For the purpose of complying with any federal or state registration or disclosure statutes concerning member trusts, ALPHA shall be deemed to be the Plan Administrator hereof in lieu of the Trustee.

IN WITNESS WHEREOF, the Trustee and ALPHA have caused this Agreement to be executed by their respective officers thereunto duly authorized on the date first above written.

AMERICAN LIFE PENSION
HEALTH ASSOCIATES
CORPORATION

By /s/ _____

Attest: /s/ _____

FIRST NATIONAL BANK OF
JACKSON, MISSISSIPPI

By /s/ _____

Attest: /s/ _____

EXHIBIT A

REQUEST FOR PARTICIPATION IN PLANNED SECURITY TRUST

The undersigned Employer adopts and requests to become a trustor and participate in all of the terms and conditions of the Agreement and Declaration of Trust made and entered into as of August 1, 1975 by and between the American Life Pension Health Associates Corporation and the Trustee of the PLANNED SECURITY TRUST.

It is understood that under the provisions of the Agreement and Declaration of Trust, Participating Employers shall contribute to the PLANNED SECURITY TRUST an appropriate initial contribution and such other amounts as may be required for the purpose of providing and maintaining a plan of group insurance as specified in said Agreement and Declaration of Trust and that Participating Employers shall furnish any information required in the administration of said insurance trust.

It is also understood that should the undersigned or any or all of his employees, for any reason, fail to qualify for insurance as provided in said Agreement and Declaration of Trust and the insurance policy or policies issued thereunder, any monies paid by or on account of the undersigned for the purpose of providing and maintaining insurance as specified in said Agreement and Declaration of Trust shall be returned to the extent of such lack of qualification and there shall be no further obligation whatsoever on the part of the Trustee in connection therewith.

Dated at Phoenix, Arizona this 7th day of July, 1975.

Attest American Life Pension Health Associates Corporation
(Full Name of Employer)

/s/
(Signature)

Chairman of the Board
(Title)

QUOTATIONS OF ALL REFERENCES IN TRANSCRIPT TO DEFENDANT PLANNED SECURITY TRUST MADE IN THE PRESENCE OF THE JURY[1]

Now, I imagine you've already been able to gather pretty much from what Judge Marquardt told you during the voir dire that basically this lawsuit involves a claim by my clients, Calvin and Suzanne Sparks, against the defendants in this case, the Republic National Life Insurance, the American Life Pension Health Associates Corporation, Alpha Corporation, and Planned Security Trust, or the Plan, dba Planned Security Trust.

(Plaintiffs' Opening Statement, R.T. I, at 16.)

Q Okay. Would you describe those documents?

A The one identified as Number 14 is a document headed "Planned Security Trust, participating unit, Sun Valley Sales Air Conditioning, insured Murray C. Ostrander."

***

Q Is the schedule of benefits similar to that typically given to each insured of an insurance group of the Planned Security Trust?

A I don't know.

Q Okay. Aside from the first page of that document, what are the remaining pages of Exhibit 14?

A Photocopies of what appears to be a group insurance certificate of Republic National Life. The reason I said I couldn't identify it is that we have, you know, a whole

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[1] Statements where the name Planned Security Trust or "PST" were merely mentioned, with no explanation as to what Planned Security Trust was or how it interacted with the other defendants, have been omitted.

bunch of different groups, and I'm not familiar enough with PST to tell whether this is one of theirs or not. This is the kind of document we would give to a group certificate holder. I don't know if it's one of ours or not, in its entirety.

(Cross-examination of Boyd Croxen, R.T. I at 68-69.)

Q I see. And would this be a document typically given to an insured group under a trust such as the Planned Security Trust?

A No.

(Id. at 69-70.)

Q You've been employed by Republic National Life since 1975?

A But I don't know what if that document there is one that would be given to an insured under PST.

(Id. at 70.)

Q Okay. Has the printed part, aside from that insert, been in use by the company for several years?

A This is a document produced and prepared by *Planned Security Trust, which is an organization of the ALPHA group.* I've seen this document—or not this one—but I've seen another one just like it several times, in the course of my work as an assistant counsel.

(Id. at 71.) (Emphasis supplied.)

Q Would you describe the relationship between Republic National Life and the Planned Security Trust and ALPHA?

A All right. Republic National Life Insurance Company is an insurance company. It's a stock, life and health insurance company, domiciled in Dallas, Texas. It does business in all the states of the United States, with the exception of New York.

We issued some years ago—and it was before I worked for the company, so I'm not exactly sure when. *But we issued a group insurance policy to an entity known as the Planned Security Trust. That's a trust established in a bank in Jackson, Mississippi.*

Under that group insurance policy ALPHA Corporation, or American Life Health Pension Associates, administers and markets a program of group insurance for mostly small employers, people who have generally less than 25 employees.

ALPHA Corporation, through brokers or insurance—insurance salespeople all over the country, sells coverage to an employer such as Mr. Sparks' company, insuring the people who work for that company. They also administer the insurance. That is they collect the premium from the unit, which is this document Number 14. It says participating units, Sun Valley Sales.

The employers are called units. The individuals who are insured as employees of Sun Valley Sales are insurers. Group insurance similar to the group insurance that anyone has who works for an employer—I'm a group insurer of the Republic National Life Employee Group.

In addition to selling through its licensed agents all over the United States, who are also licensed with the Republic, the insurance—ALPHA administers it by collecting the premium by billing—for sending a bill to the unit for the amount of insurance or the number of persons they think are insured; sending past due notices and all that sort of stuff.

They also are the primary claims handling people. Now, this is ALPHA Corporation. The claim is typically sent to them. Their claims or processing people evaluate the claim, determine what amounts are payable under the policy for the particular benefits claimed, and prepare a draft drawn on our accounts and pay the claims.

(Id. at 71-73.)

Q Would Republic National Life typically send any document whatsoever to an individual group insured of the Planned Security Trust?

A No.

(Id. at 74.)

[Q] Let's take Calvin Sparks. What would he get from Republic National Life?

A He should get a certificate of insurance.

Q A certificate in the fashion that's marked as Exhibit 13?

A We have been there—

Q In the same format?

A I, you know—I don't want to be difficult about this. This is like the certificates of insurance that my company uses. I just don't know if that's the certificate from PST.

Q In any event, Mr. Sparks as an individual insured of the Planned Security Trust, would receive a document that explained the terms of the Republic National policy, would he not?

A He should receive a document which is in most respects a copy of the policy Republic issued to the Planned Security Trust in Jackson, Mississippi.

(Id. at 75.)

Q To your knowledge, is there any difference in the certificate sent to an individual insured of the Planned Security Trust, and the policy directly of the Planned Security Trust?

A Yes, there are differences.

Q Okay. Would there—

A But there is two different documents.

(Id. at 76.)

Q To your knowledge is there any difference in terms of the insuring provisions that would cover a given individual between the certificate or a policy, that you received from Planned Security Trust and the policy issued by Republic directly to Planned Security Trust?

A In very broad terms, no.

Q Okay. So, in using those same broad terms, basically the insuring provisions issued from Republic National to Planned Security Trust are the same as from Planned Security Trust to the individual insured?

***

THE WITNESS: No.

BY MR. BURNHAM:

Q Do you have in your possession a copy of the policy of insurance issued to the Planned Security Trust by Republic National, with you today?

A No, I didn't bring one.

Q Do you have a copy of the form of certificate that would be issued by Planned Security Trust to an individual insured?

A No. I think we produced that earlier for you.

(Id. at 77-79)

Q Let me ask you some other general questions about the Planned Security Trust.

From 1977 to present, do you have any knowledge as to how many states in the United States that trust is qualified to solicit insurance with?

A No, I don't.

Q Do you know of your own personal knowledge whether any insured of the Planned Security Trust covered by the Republic National Life policy ever received a $250,000 benefit payment by that company?

A No, I don't.

(Id. at 81-82.)

Q As to the Planned Security Trust transaction, are you aware—

A Of something Republic National Life does?

Q Right. To your knowledge, would Republic National Life send any document to an insured under the Planned Security Trust?

A Not directly.

Q Okay. Indirectly, how would it work? Was Planned Security Trust to send some document of Republic National Life to its insurers?

A I don't understand that question.

Q How, indirectly, does Republic National Life transmit?

A To the extent that ALPHA Corporation is an agent of Republic National Life, and ALPHA distributes information to insurers. Then Republic would, as the principal of the agent. Republic doesn't send anything to those people directly.

Q Okay. To your knowledge was there any policy or agreement of Republic National to have a certificate sent by ALPHA to each insured of the Planned Security Trust?

A Yes, there is such an agreement.

Q Okay. Does that certificate, if you will, sent to each insured, typically follow the issuance of the policy to the individual insured, or is it simultaneous with the transaction? Strike that.

In other words, a person signs up for coverage under the Planned Security Trust; at what point does he get the certificate from Republic National? At some later time?

A Well, yeah. Obviously we don't, now. There are 240 million people out there, and Republic has 4,000 agents, and we don't receive mental telepathy to know.

Q So typically, when an agreement is entered into whereby an insured group buys the Republic National or Planned Security Trust policy, they've never seen a more detailed description of its benefits and provisions than a document such as Exhibit 1? Is that not correct?

A Well, I'm not going to say they never have. I don't know.

Q Well, in a typical case?

A I don't know.

Q Aside from a certificate or brochure of that nature, are you aware of any other documents that an insured of the Planned Security Trust would typically receive?

A Sun Valley Sales should have a participation agreement. The documentation evidencing insurance for Sun Valley Sales and its employees should consist of a participation agreement by the employer, whereby the employer company agrees to participate in the trust, and certificates of insurance issued by ALPHA Corporation as the administrator for each individual, or individual and family group—I don't want to use the word "group"—for each individual or individual and family insured under the unit.

(Id. at 86-88.)

Q Okay. You refer to a participation agreement as being an agreement entered into by, for example, Sun Valley Sales and the Planned Security Trust?

A Yes.

Q Would that document be received by Sun Valley Sales typically after the effective date of the insurance?

A As I recall, that's a document that Sun Valley Sales signs, which goes to ALPHA Corporation as the administrator of the trust. I don't think it's something that Sun Valley Sales gets to keep, unless there is some provision for them to have a copy of it. It doesn't evidence any insurance coverage.

(Id. at 89.)

Q Okay. In what circumstances does Republic National Life terminate an insured group under the Planned Security Trust?

A Well, Republic National Life can terminate its insurance of the Planned Security Trust by giving notice, according to the contract.

Q In what circumstances can the Planned Security Trust terminate an insured group?

MR. HOLLAND: I object, Your Honor, because we still don't have anything that indicates that Republic National Life Insurance Company controls the termination of contracts made by PST with individual groups such as Sun Valley Sales.

Mr. Croxen's expertise and knowledge is solely limited by the testimony, at least that we have heard, to Republic National Life Insurance Company and its dealings with PST, rather than PST's dealings with individual insurers.

THE COURT: Perhaps that ought to be asked, if his knowledge only goes to Republic, and not to any subsidiary. Then we ought to get that as the foundational question first. If he can't testify to a subsidiary, then I'll sustain.

MR. BURNHAM: Mr. Croxen, do you have any familiarity with—

MR. HOLLAND: May I ask that your remarks be stricken from the jury, because you just referred to PST as a subsidiary, which Mr. Croxen has not indicated in his testimony.

THE COURT: You're absolutely correct. I'm not attempting—I don't want to use that word. I haven't heard the relationship.

MR. HOLLAND: I feel very sensitive, because we tried to define, and I don't want—

THE COURT: I thank you, and stand corrected.

I hope you understand, ladies and gentlemen, I'm not trying to set up the roles and relationships.

BY MR. BURNHAM:

Q Do you have any—do you, yourself have any knowledge as to what the terms of the insurance issued by the Planned Security Trust were or are to the insured? Have you reviewed the certificates they've made?

A In general terms I know.

Q Okay. I think you've testified that Republic National sees to it that its owners, if you will, go from Republic National to ALPHA, through the Planned Security Trust, and to the individual insured, isn't that correct?

A No, I didn't testify to that. I said ALPHA issues certificates of insurance under a group insurance policy issued by Republic National Life.

Q And is the ALPHA certificate of insurance a Republic National Life form agreement?

A Yes.

Q Okay. Under what—and are you familiar with—basically with what form of Republic National Life agreement was used by ALPHA under the Planned Security Trust?

A It's some component of what we call the 3,000 group series policies and group certificates. There are 164 pages that can be used to create a single policy under that series. And I have no idea what combination is PST.

(Id. at 91-93.)

Q Okay. Are the termination practices of ALPHA or PST, to your knowledge, any different than what the policy provisions say?

A Not to my knowledge. They should not be.

(Id. at 95.)

Q There never was any policy issued to Sun Valley Sales?

A There never was any policy issued to any unit under the Planned Security Trust.

Q Okay. The policy was issued to the employees, is that correct?

A No, sir. The policy was issued to the Planned Security Trust by Republic National Life Insurance Company.

Q Okay.

A The individual insured or individual insured and their families get a certificate of insurance evidencing the coverage they have chosen to purchase under the policy issued to Planned Security Trust.

I—you know, I'm sorry to sound so complicated. I'm sorry I don't respond when you don't ask in my words, but I have to do it that way.

Q All right. The certificate the individual gets describes the provisions of the policy to the Planned Security Trust?

A That's correct.

Q Okay. So, for all practical purposes the individual insured has a document of the nature that's marked as Exhibit Number 14?

A It should be something like this one. That's right.

Q So then, when we refer to "termination" the individual would be terminated by the Planned Security Trust or by Republic National Life?

A More likely it would be because of his dealings with the Trust or more—I'm sorry that's not correct.

More likely it would be because and through his dealings with ALPHA Corporation. *The trust—the trust is just a trust in the bank. It holds the policy. It doesn't do anything.*

Q Okay. So ALPHA Corporation makes a decision to terminate a given individual?

A In accordance with the policy.

Q Okay. And is governed by the terms of the policy?

A. Yes.

(Id. at 97-98.) (Emphasis supplied.)

Q Okay. Now, based upon your knowledge of the Planned Security Trust, ALPHA Corporation certificate, the master policy, and Republic National Life Company, after culmination of the policy what is the consequences of termination of the policy to a given individual's medical treatment or eligibility therefor?

A Coverage terminates.

Q Totally?

A Yes.

Q Okay. So, if we will—if the policy terminates on today, and a person goes into the hospital for treatment tomorrow, would that be covered or not covered, or paid for?

A By Republic National Life?

Q Yes. With the Planned Security Trust or ALPHA Corporation.

MR. HOLLAND: I object to the lack of foundation about what's covered by PST. Mr. Croxen here again is talking about a policy—master policy which has variables in it that are reduced to a specific plan that is then sold according to the negotiations between PST, through ALPHA Corporation, and the consumer or the customer.

And the master policy, as he's testified, covers all these 164 page variables. And therefore, until we know specifically which provisions are being covered, it's a question that's improper for this witness to answer. And then when it is refined on that point, the policy speaks for itself.

(Id. at 99-100.)

Q This second page—the third page of the brochure talks about PST Plus, major medical benefits. Did Calvin purchase that coverage?

A No, sir.

(Direct examination of Robert Bowden, R.T. II at 77.)

Q And prior to selling this coverage to Calvin, this PST policy, have you had any prior course of dealings with PST and ALPHA?

A Well, yes, I had one other. I had one other policy with them, in a sense. I had several of them.

Q With both ALPHA and PST?

A *Well, ALPHA, sir, is PST.*

(Redirect examination of Robert Bowden, id at 86.) (Emphasis supplied.)

Q Very good. Now, turning over to the next document here, can you tell me what this is?

A This is the trust document for the Planned Security Trust.

Q Okay. And turning over—this has several pages—can you tell me who signed that document?

A It was signed by myself and Mr. Wardlaw (phonetic) who's the trustee of the First National Bank, Jackson, Mississippi.

Q Did you sign that document as chairman of the board—

A Right.

Q —of ALPHA?

A Yes, sir.

Q What does this document signify?

A This simply is a trust instrument, which all of these policies and groups were insured under.

Q I see. Was this prepared in the normal course of bussiness [sic] at ALPHA Corporation?

A Yes sir.

Q Let's turn—this next document—what is that? Is that part of the same document or—

A Yes, this is part of the same trust document.

Q Okay. And whose signature appears on that?

A My signature.

Q And again, as chairman of the board of ALPHA?

A Yes, sir.

(Direct examination of James Bundy, Chairman of the Board of the ALPHA Corporation, R.T., IV at 4-5.)

Q Mr. Bundy, were you at any time during the period of 1975, through the first of May, 1977, an officer of Planned Security Trust?

A No, sir. There were no officers of Planned Security.

Q Did you have any official capacity in relation to Planned Security Trust?

A No, sir.

Q Thank you. That was an entity that your company contracted with, did I understand, is that correct?

A Right.

Q Did you have custody of any of the documents that were the property of Planned Security Trust during that period of time?

A No. The trust document and the master policy were held by the trustee, who was First National Bank of Jackson, Mississippi.

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Q Yes. We have three parties. If there was a contract made between Republic National Life Insurance Company and Planned Security Trust, in January, 1977, did you have any participation in that yourself?

A *I would participate from the standpoint of working with Republic National, to design the product. But Republic National would issue the policy—the master policy to the Planned Security Trust.*

(Id. at 9-10.) (Emphasis supplied.)

[Q] Did ALPHA corporation ever co-sign or otherwise bind itself to this master policy, as far as you know?

A No, sir. Master policy is issued to the trust. And ALPHA does—that's a trustee in Mississippi.

(Id. at 11-12.)

Q What you said earlier, I believe, that this is not part of the documentation that—that ALPHA Corporation participated in itself, is that correct?

A *Right. Master policy is issued to the trustee, which is the bank. We have—or ALPHA Corporation has a copy of the master contract, and they're instructed to administer and pay benefits according to what coverage the people have under the master contract.*

(Id. at 14.)

[Q] The trust which we have been talking about was created on August 1, 1975, was it not?

A Yes, sir.

Q *Okay. Now ALPHA, pursuant to these agreements—ALPHA was the administrator of Republic National's policy which was issued to the Planned Security Trust, and that's been the case since August 1, 1975, isn't that true?*

A *Yes, sir.*

Q As such, ALPHA has had the power, as given them by Republic National, to approve and deny claims under the policy since that time, isn't that true?

A Right. ALPHA would administrate, according to the direction from Republic National. However, if a claim came up—[illegible]lly claims, I believe, over $5,000—any of those claims—or maybe it was $2,000, $2,000 or $5,000—any claim in excess of that we would send to Republic National, and then they would process the claim.

(Id. at 19-20.) (Emphasis supplied)

Q Okay. Did ALPHA, as the administrator, have occasion to prepare advertising literature concerning the policies that Republic National was underwriting?

A Right. ALPHA would prepare brochures and certain advertising literature, but it was with the understanding that all of it had to be approved prior to release by Republic National.

Q So, any literature would have to be approved by Republic National before it would be distributed?

A Yes, sir.

Q Would you look at Plaintiff's Exhibit 1 in evidence, and tell me if you've ever seen a document like that before?

A Yes, sir. This is Planned Security Trust brochure.

Q And would that—what you've just testified to, did it apply to that brochure? In other words, would ALPHA distribute a brochure of that nature without first obtaining the permission of Republic National?

A No, sir.

Q Are you aware, sir, whether or not there is any differences between this brochure concerning the major medical coverages and the brochure that ALPHA was distributing to its agents in the year 1977?

A The date in this is 5-78, and it's got a number 4 on it. This means, I believe, it's the fourth reprint. And approximately every nine months we would reprint the brochures and make any necessary changes that—typographical errors, or anything that Republic National felt needed to be changed. I do not know if this was—this date of 5-78—I would assume in 1977 there was another brochure.

(Id. 21-22.)

The insurer in this instance is called Planned Security Trust. Planned Security Trust is according to the evidence, we believe, a trust in a bank in Mississippi which exists on a set of legal sized sheets of paper which has among its assets money which it used to receive premium, disburse benefits in the line of insurance. It has no agents. It has no employees that you'll hear about in the context of dealing with Sparks.

There will be no testimony directly or indirectly linking Planned Security Trust to anybody in this action save and except that it was their, it was Planned Security Trust's money which was used in the taking of the insurance application and the disbursement of benefits.

Also, there will be Republic National Life Insurance Company referred to. If you're interested in geography, you can imagine first of all that Alpha Corporation is in Baton Rouge, Louisiana down to the Gulf of Mexico in the State of Louisiana. As we have mentioned, Planned Security Trust is in a bank in Mississippi.

Republic National Life Insurance Company as you have heard or will hear is one of the large insurance companies in the United States. They underwrite insurance for other companies in addition to doing certain insurance work of their own. In this instance, they are referred to as the underwriter. That is to say they insure the business which is being transacted by Alpha Corporation for Planned Security Trust and certain responsibility for the payment of claims comes and falls upon Republic National Life Insurance Company. For lack of a better word, they would be the insurance company for the initial insured.

(Defendants' Opening Statement, R.T., V at 28-29.) (Emphasis supplied.)

Mr. Bowden, we believe the evidence will develop will be regarded as an agent under the insurance laws of Arizona. You'll be told what those laws require. We'll not talk about it here but the proof will be to the effect that Mr. Bowden in his relationships was not employed by Republic National Life Insurance Company. He was not employed by Alpha Corporation. He was not employed by Planned Security Trust.

(Id. at 30.)

Q *Mr. Kelly, what does Republic National Life get out of this relationship with the Planned Security Trust and Alpha Corporation?*

A *Republic National Life is the insurer, any type of profit that would be made on the insurance Republic would get.*

Q *And that is the insurance with the trust?*

A *Yes.*

(Cross-examination of Hunter Kelly, id. at 48.) (Emphasis supplied.)

Q Let me ask you with respect to Planned Security Trust. Do you have any communications with Planned Security Trust with respect to what you do in dealing with these claims or continuation of business in force on any of those groups?

A *Planned Security Trust does not exist other than as a document, as a mechanism for insurance. There are no, there is not an office of Planned Security Trust. There are no people at Planned Security Trust. It is strictly an insuring mechanism.*

(Direct examination of Robert DeArmond, id. at 84-85.) (Emphasis supplied.)

In addition to that, my client is Planned Security Trust. I have never met Planned Security Trust, I can't ever meet Planned Security Trust because it is only a set of documents in the bank in Jackson, Mississippi. That has been testified to without contradiction may times.

(Defendants Closing Argument, R.T. VII, at 28.) (Emphasis supplied.)

As I've said, Planned Security Trust had nobody doing anything, they just are represented by documents, by money in the bank and hopefully by making a profit and participating in insurance transactions of the kind that have been discussed here.

(Id. at 29.) (Emphasis supplied.)

The fact that Mr. Kelly doesn't know anything about that, ladies and gentlemen, doesn't prove anything because you see the defendants in this case are the Alpha Corporation, the Planned Security Trust, this paper organization, and Republic National Life Insurance. We are not suing Hunter Kelly, we're not suing Mr. DeArmond, we're not

suring [sic] Boyd Croxen, we don't have to prove that Boyd Croxen had some ill will in his heart for the Sparks to prove our case.

We're suing the companies, not the individuals in the company. The fact that Mr. Hunter Kelly has no knowledge of this lawsuit until three months ago is irrelevant. His company has known about it all along, they had known about it.

The point is, ladies and gentlemen, you can't allow these defendants to try to hide behind each other and say well, like Mr. Kelly says, the paper, the Planned Security Trust is just a paper agreement that is sitting in a bank somewhere, there is no people to represent that, it's just a paper entity. You can imagine what the Sparks have had to go through in dealing with these people with these kinds of explanations. He tells us that, you know, the Planned Security Trust could not have done anything because it's just a paper document.

Well, the fact of the matter is that Judge Marquardt is going to tell you in his instructions that this is a direct quote, I have determined that Republic, PST and Alpha Corporation were acting jointly and severally in selling the insurance, circulating literature concerning it, and in deciding whether or not to pay claims under it.

That simply means, ladies and gentlemen, that you cannot have big companies like Republic National Life Insurance Company and the Alpha Corporation getting together and creating some entity on paper, filing it away in the bank and then saying that we didn't do anything wroing, how could this paper do anything wrong, it's just paper.

The fact of the matter is the paper functions according to the way the companies want it to function and Judge Marquardt has already ruled that Alpha Corporation, Planned Security Trust and Republic National Life Insurance Company are all responsible for each other's actions and you

have to look at them in terms of companies because one man in any one of those companies doesn't feel any ill will for the Sparks or doesn't know about this or doesn't know about that does not mean that the entire company is now suddenly free of any wrongdoing.

(Plaintiffs' Rebuttal Closing Argument, id. at 58-60.)